

## Article 21.

### Retaliatory Employment Discrimination.

#### **§ 95-240. Definitions.**

The following definitions apply in this Article:

- (1) "Person" means any individual, partnership, association, corporation, business trust, legal representative, the State, a city, town, county, municipality, local agency, or other entity of government.
- (2) "Retaliatory action" means the discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment. (1991 (Reg. Sess., 1992), c. 1021, s. 1.)

#### **§ 95-241. Discrimination prohibited.**

(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

- (1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
  - a. Chapter 97 of the General Statutes.
  - b. Article 2A or Article 16 of this Chapter.
  - c. Article 2A of Chapter 74 of the General Statutes.
  - d. G.S. 95-28.1.
  - e. Article 16 of Chapter 127A of the General Statutes.
  - f. G.S. 95-28.1A.
  - g. Article 52 of Chapter 143 of the General Statutes.
  - h. Article 5F of Chapter 90 of the General Statutes.
- (2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.
- (3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter, by Article 2A of Chapter 74 of the General Statutes, or by Article 52 of Chapter 143 of the General Statutes.
- (4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes.
- (5) Exercise rights under Chapter 50B. Actions brought under this subdivision shall be in accordance with the provisions of G.S. 50B-5.5.

(b) It shall not be a violation of this Article for a person to discharge or take any other unfavorable action with respect to an employee who has engaged in protected activity as set forth under this Article if the person proves by the greater weight of the evidence that it would have taken the same unfavorable action in the absence of the protected activity of the employee. (1991 (Reg. Sess., 1992), c. 1021, s. 1; 1993, c. 423, s. 1; 1997-153, s. 7; 1997-350, s. 3; 1998-202, s. 7; 1999-423, s. 4; 2004-186, s. 18.2; 2008-212, s. 1; 2009-205, s. 2.)

#### **§ 95-242. Complaint; investigation; conciliation.**

(a) An employee allegedly aggrieved by a violation of G.S. 95-241 may file a written complaint with the Commissioner of Labor alleging the violation. The complaint

shall be filed within 180 days of the alleged violation. Within 20 days following receipt of the complaint, the Commissioner shall forward a copy of the complaint to the person alleged to have committed the violation and shall initiate an investigation. If the Commissioner determines after the investigation that there is not reasonable cause to believe that the allegation is true, the Commissioner shall dismiss the complaint, promptly notify the employee and the respondent, and issue a right-to-sue letter to the employee that will enable the employee to bring a civil action pursuant to G.S. 95-243. If the Commissioner determines after investigation that there is reasonable cause to believe that the allegation is true, the Commissioner shall attempt to eliminate the alleged violation by informal methods which may consist of conference, conciliation, and persuasion. The Commissioner shall make a determination as soon as possible and, in any event, not later than 90 days after the filing of the complaint.

(b) If the Commissioner is unable to resolve the alleged violation through the informal methods, the Commissioner shall notify the parties in writing that conciliation efforts have failed. The Commissioner shall then either file a civil action on behalf of the employee pursuant to G.S. 95-243 or issue a right-to-sue letter to the employee enabling the employee to bring a civil action pursuant to G.S. 95-243.

(b1) The Commissioner may reopen an investigation under this Article for good cause shown within 30 days of receipt of the right-to-sue letter. If an investigation is reopened pursuant to this section, the 90-day time limit set forth in G.S. 95-243(b) shall not commence until the new investigation is complete and either a new right-to-sue letter is issued or the Commissioner notifies the parties in writing that conciliation efforts have failed.

(c) An employee may make a written request to the Commissioner for a right-to-sue letter after 90 days following the filing of a complaint if the Commissioner has not issued a notice of conciliation failure and has not commenced an action pursuant to G.S. 95-242.

(d) Nothing said or done during the use of the informal methods described in subsection (a) of this section may be made public by the Commissioner or used as evidence in a subsequent proceeding under this Article without the written consent of the persons concerned.

(e) The Commissioner's files and the Commissioner's other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are open or pending in the trial court division.

(f) In making inspections and investigations under this Article, the Commissioner or his duly authorized agents may, in addition to exercising the authority granted in G.S. 95-4, issue subpoenas to require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be reimbursed for all travel and other necessary expenses which shall be claimed and paid in accordance with the prevailing travel reimbursement requirements of the State. In the case of failure or refusal of any person to obey a subpoena under this Article, the district court judge or superior court judge of the county in which the inspection or investigation is conducted shall, upon the

application of the Commissioner, have jurisdiction to issue an order requiring compliance. (1991 (Reg. Sess., 1992), c. 1021, s. 1; 1993, c. 423, s. 2; 2011-366, ss. 9, 10.)

#### **§ 95-243. Civil action.**

(a) An employee who has been issued a right-to-sue letter or the Commissioner of Labor may commence a civil action in the superior court of the county where the violation occurred, where the complainant resides, or where the respondent resides or has his principal place of business.

(b) A civil action under this section shall be commenced by an employee within 90 days of the date upon which the right-to-sue letter was issued or by the Commissioner within 90 days of the date on which the Commissioner notifies the parties in writing that conciliation efforts have failed.

(c) The employee or the Commissioner may seek and the court may award any or all of the following types of relief:

- (1) An injunction to enjoin continued violation of this Article.
- (2) Reinstatement of the employee to the same position held before the retaliatory action or discrimination or to an equivalent position.
- (3) Reinstatement of full fringe benefits and seniority rights.
- (4) Compensation for lost wages, lost benefits, and other economic losses that were proximately caused by the retaliatory action or discrimination.

If in an action under this Article the court finds that the employee was injured by a willful violation of G.S. 95-241, the court shall treble the amount awarded under subdivision (4) of this subsection.

The court may award to the plaintiff and assess against the defendant the reasonable costs and expenses, including attorneys' fees, of the plaintiff in bringing an action pursuant to this section. If the court determines that the plaintiff's action is frivolous, it may award to the defendant and assess against the plaintiff the reasonable costs and expenses, including attorneys' fees, of the defendant in defending the action brought pursuant to this section.

(d) Parties to a civil action brought pursuant to this section shall have the right to a jury trial as provided under G.S. 1A-1, Rules of Civil Procedure.

(e) An employee may only bring an action under this section when he has been issued a right-to-sue letter by the Commissioner. (1991 (Reg. Sess., 1992), c. 1021, s. 1.)

#### **§ 95-244. Effect of Article on other rights.**

Nothing in this Article shall be deemed to diminish the rights or remedies of any employee under any collective bargaining agreement, employment contract, other statutory rights or remedies, or at common law. (1991 (Reg. Sess., 1992), c. 1021, s. 1.)

#### **§ 95-245. Rules.**

The Commissioner may adopt rules needed to implement this Article pursuant to the provisions of Chapter 150B of the General Statutes. (1993, c. 423, s. 3.)

#### **§§ 95-246 through 95-249. Reserved for future codification purposes.**